

## GOODMAN

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**BY ECFS**

August 18, 2015

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

*Re: Ex Parte Communication, Amendment of the Commission's Rules Relating to Retransmission Consent, MB Docket No. 10-71; Mandatory Electronic Filing for Cable Special Relief Petitions, MB Docket No. 12-1*

Dear Ms. Dortch:

On behalf of Morgan Murphy Media, licensee of television stations in the Madison, La Crosse-Eau Claire, Spokane and Yakima-Pasco-Richland-Kennewick television markets, this letter will point out that, while MVPDs loudly complain about broadcasters' conduct of retransmission consent negotiations, the same MVPDs engage in exactly the conduct about which they complain.

Specifically, DISH Network filed a complaint against the Sinclair Broadcast Group on August 15, 2015, claiming that Sinclair had not negotiated in good faith.<sup>1</sup> DISH Network's first allegation is that it offered "a short-term contract extension to Sinclair that would include a retroactive 'true-up' when new rates were agreed upon, and would preserve the ability of DISH customers to access the Sinclair Stations while negotiations continued."<sup>2</sup> When Sinclair allegedly declined the extension offer, DISH complained that "[r]ather than negotiating in good faith, it is clear from these actions that Sinclair is seeking to intentionally harm and exploit millions of innocent consumers to gain negotiating leverage."<sup>3</sup> Further, "[b]ecause DISH offered to retroactively 'true-up' Sinclair when new rates were agreed upon, Sinclair *has nothing to lose*

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<sup>1</sup> DISH Network, L.L.C., *Verified Retransmission Complaint and Request for Preliminary Injunctive Relief*, MB Docket No. 12-1, File No. CSR-\_\_\_\_\_-C (filed Aug. 15, 2015).

<sup>2</sup> *Id.* at ii.

<sup>3</sup> *Id.* at iii.

*and consumers have everything to gain from an extension of DISH's existing contract that would allow negotiations to continue."*<sup>4</sup>

This tale might be more convincing if, at the very same time, DISH were not engaged in precisely the same tactic. Morgan Murphy's contract with DISH was set to expire on July 16, 2015. Morgan Murphy sent an offer of terms to DISH on May 12, 2015. Despite repeated inquiries, DISH did not make a proposal in response until June 25, 2015, almost six weeks later. The parties then negotiated both rates and agreement terms. Just before the contract expired, DISH agreed to an extension until August 7, 2015. The parties continued to negotiate and they agreed on a second extension to expire August 13, 2015.

Before the expiration of that extension, Morgan Murphy offered to agree to an additional extension on terms similar to those DISH offered to Sinclair, *i.e.*, to "true-up" rates back to the beginning of the term when the parties reached agreement. DISH, however, declined to extend the agreement unless Morgan Murphy would offer a substantial and unilateral reduction in its proposed rates. Morgan Murphy offered to continue negotiations but DISH took the position that it had reached its "bottom line" and declined to respond to Morgan Murphy's last offer.<sup>5</sup>

The Morgan Murphy stations have been off of the DISH system since the evening of August 13, depriving thousands of consumers of access to ABC and CBS programming and valuable local news and information. It is quite remarkable that DISH, having declined to agree to extend the agreement with Morgan Murphy, then argued to the Commission that declining to accept an offer of a contract extension constitutes a violation of the good faith bargaining rules. To paraphrase DISH, it has nothing to lose and consumers everything to gain from an extension. That observation, however, apparently applies to broadcasters but not to DISH itself. If Sinclair is found to have violated its obligation to negotiate in good faith, the same finding should be applied to DISH.

Morgan Murphy observes that the only MVPD with which it has ever failed to reach an agreement is DISH, which reportedly is responsible for the largest number of service interruptions of all MVPDs. The Commission should pay little heed to complaints from DISH and other MVPDs who are the proverbial "pot calling the kettle black."

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<sup>4</sup> *Id.* (emphasis supplied).

<sup>5</sup> On August 17, 2015, a DISH customer service representative stated to a viewer that "[w]e offered an extension. WISC refused this offer." This statement is blatantly false.

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Should there be any questions concerning this matter, please direct them to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jack N. Goodman". The signature is fluid and cursive, with the first name "Jack" being more prominent.

Jack N. Goodman

*Counsel to Morgan Murphy Media*

cc: (by e-mail)

William Lake  
Maria Kirby  
Chanelle Hardy  
Valery Galasso  
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Robin Colwell  
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